IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JAIPUR BENCH, JAIPUR

J U D G M E N T

D.B. Civil Special Appeal (Writ) No.

178/1996

(Hem Raj Singh Vs. Ajmer Vidhyut Vitaran Nigam Limited and Others)

Date of Judgment :: 26th March, 2007

P R E S E N T

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Rajendra Prasad Sharma for the appellant

Mr. Vikrant Gupta for the respondents No. 1 and 2

Ms. Anisha Jain for Mr. Manish Bhandari for the respondent No.3

Oral Judgment (**Per R.M. Lodha, J.**)

The unsuccessful petitioner is in appeal before us. His writ petition seeking writ of certiorari for quashing the order deducting the salary and allowance of the petitioner for the period from 22nd June, 1975 to 25th September, 1979 and for issuance of mandamus to the respondents to make the full payment of the salary for the period from 22nd June, 1975 to 25th September, 1979 came to be dismissed by the Single Judge vide order dated 17th October, 1995.

2. For the sake of convenience we shall refer the appellant "the petitioner" and the respondent No.1–The Rajasthan State Electricity Board "the Board".

3. The undisputed facts are thus;

i) That the petitioner was employed as Upper Division Clerk (U.D.C.) since the year 1965 in the office of the Executive Engineer (DDS) of the Board.

ii) That in connection with the murder case (FIR No. 41/1975), on 22nd June, 1975, the petitioner was arrested along with few other accused persons.

iii) That upon his arrest that continued for more than 48 hours, the petitioner was suspended.

iv) That the petitioner was prosecuted for the offences punishable under Sections 302/149 and Sections 147 and

148 of Indian Penal Code and was convicted by the trial court.

v) That after the judgment of conviction was passed by the trial court and during the pendancy of the criminal appeal, the petitioner was dismissed from service with effect from 31st January, 1978 on the ground of the conduct, which led to his conviction and sentenced to suffer life imprisonment.

vi) That in the appeal challenging the conviction, the order of conviction was set-aside by this Court on 25th September, 1979 and he was acquitted.

vii) That subsequent to his acquittal by this Court, on 7th February, 1980, the office order was issued by the Board setting aside the order of dismissal dated 31st January, 1978 and it was ordered that the petitioner shall be reinstated with effect from 26th September, 1979 i.e. immediately after he was acquitted by this Court on 25th September, 1979.

viii) That pursuant to the order dated 7th February, 1980 petitioner joined his duty in the office of the Executive Engineer (DDS) at Sikar.

4. The petitioner's grievance arose when he was denied the back wages for the period from 22nd June, 1975 to 25th

September, 1979 and the continuity of service.

5. The petitioner is said to have made representation for the redressal of his grievance but that remained un-heeded. That necessitated the petitioner to approach this Court in extraordinary jurisdiction claiming the reliefs as set out above.

6. The writ petition was opposed by the Board by filing the reply-affidavit on 30th January, 1981. The action of non payment of wages from 22nd June, 1975 to 25th September, 1979 was sought to be justified by relying upon the Employees Service Regulations and also the position that no sooner this Court set-aside the order of conviction and acquitted the petitioner, from the next day the petitioner was reinstated and all benefits have been given.

7. The Single Judge after hearing the parties by his judgment dated 17th October, 1995 dismissed the writ petition. He held that neither Rule 41 of the Employees Service Regulations was unconstitutional nor the Board acted contrary to Rule 41. The Single Judge, accordingly, dismissed the writ petition.

8. The counsel for the appellant heavily relied upon clause (2) of Regulation 41 and submitted that by virtue thereof the petitioner must be deemed to be on continuous duty once he was acquitted by the criminal court. He sought to support his submission by relying upon the Circular dated 25th February, 1982 reproduced at pages 12-13 of the memo of appeal. He also submitted that the effect of the order of acquittal is as if the appellant suffered no disciplinary disability and, therefore, he was entitled

to the entire back wages. In this regard he sought to place reliance upon the Constitution Bench judgment of the Supreme Court in the case of K. Prabhakaran Vs. P. Jayarajan {**AIR 2005 Supreme Court 688**}.

9. On the other hand, Ms. Anisha Jain, the counsel for the Board justified the order of the Single Judge and relied upon the judgment of the Supreme Court in the case of Union of India and Others Vs. Jaipal Singh {**(2004) 1 Supreme Court Cases 121**}.

10. That the petitioner was arrested on 22nd June, 1975 in a murder case (FIR No. 41/1975) and continued to remain in judicial custody until 25th September, 1979 when the judgment of acquittal was passed by this Court in appeal, is not in dispute. It is also not in dispute that immediately after his acquittal from the next day, the petitioner was reinstated

and that all benefits including the wages etc. have been paid to him from that day. The question before us is whether the action of the Board in denying the petitioner the back wages for the period from 22nd June, 1975 to 25th September, 1979 suffers from any illegality. The incidental question that further arises is even if the petitioner is not entitled to the back wages for the period from 22nd June, 1975 to 25th September, 1979, whether his service during that period i.e. 22nd June, 1975 to 25th September, 1979 has to be counted as period of service without any break.

11. We wanted the counsel for the parties to show us the R.S.E.B. Employees Service Regulations, 1964, but neither of the counsel had the said Service Regulations available with them. We were, in the circumstances, left with no choice but to

refer to Regulation 41 reproduced in the writ petition as well as memo of appeal. Having carefully considered Regulation 41, we are of the view that the action of the Board in denying the petitioner the wages for the period from 22nd June, 1975 to 25th September, 1979 cannot be said to be contrary to the Regulation 41.

12. The legal position is no more res-integra that where an employee is dismissed from service on account of his conviction by a criminal court for his involvement in an offence of murder and, subsequently, he is acquitted and reinstated, such employee is not entitled to back wages for the period from the date of dismissal to the date of reinstatement. However in a case where the prosecution of an employee is at the behest of the employer, the different considerations may arise.

13. In Ranchhodji Chaturji Thakore Versus Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another {**(1996) 11 Supreme Court Cases 603**}, the Supreme Court held thus;

> "2. This case does not warrant interference for the reason that, admittedly, the petitioner was charged for an offence under Section 302 read with Section 34 IPC for his involvement in a crime committed on 1.10.1986. The Sessions Judge had convicted the petitioner under Section 302 read with Section 34 IPC and sentenced him to undergo imprisonment for life. On that basis, the respondents had taken action to have him dismissed from service since he was working as a Junior Clerk in the respondent-Electricity Board. The petitioner challenged the validity of the dismissal order by way of a special civil application filed under Article 226 of the Constitution. Pending disposal, the Division Bench of the High Court by its judgment dated 14-10-

1992 acquitted him of the offence. Consequently while disposing of the writ petition, the learned Single Judge directed the respondent to reinstate him into the service with continuity of the service, but denied back wages. The petitioner then filed Letters Patent Appeal No. 319 of 1993 which was dismissed by the impugned order dated 26-8-1993. Thus, this special leave petition.

3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken

> action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference."

14. In yet another case, Union of India and Other s Versus Jaipal Singh {**(2004) 1 Supreme Court Cases 121**}, the Supreme Court ruled as follows:-

> "4. On a careful consideration of the

matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the

department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant

> aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.
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> 5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today."

15. It is important to notice here that the petitioner was arrested through the legal process; his prosecution was not at the behest of the employer and that his arrest continued until the judgment of conviction and during the pendancy of the appeal. His imprisonment came to an end when this Court passed the judgment of

acquittal on 25th September, 1979. Obviously during his arrest, the petitioner had to be kept out of service; initially by the order of suspension and later-on by the order of dismissal. How can be Board be attributed with any fault for keeping the petitioner out of service since it followed because of the consequence provided in law; the law obligated that a person convicted for an offence has to be kept out and not to be retained in service.

16. In the circumstances, therefore, to the extent the petitioner has been denied back wages for the period from 22nd June, 1975 to 25th September, 1979, the action of the Board cannot be faulted. However, there is one flaw in the action of the Board in not counting the said period as period of service without any break. Except for the purpose of denying the

petitioner actual payment of back wages, we are of the view that the period from 22nd June, 1975 to 25th September, 1979 has to be counted as period of service without any break. We are informed that the petitioner has superannuated. We observe that if the petitioner is entitled to any pension, obviously such pension shall have to be calculated treating the period from 22nd June, 1975 to 25th September, 1979 as a period of service without any break.

17. The special appeal is disposed of as observed above with no order as to costs.

R.S. Chauhan, J. **R.M. Lodha, J.**

DK/-